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1 Board makes these:

2 FINDINGS OF FACT

3 I

4 Port Townsend Paper Company is the owner and operator of a pulp  
5 and papermill near Port Townsend, Washington. As a result of its  
6 manufacturing, wastes are produced, including hog fuel boiler ash and  
7 lime slaker grits. These wastes are disposed in a landfill, one-half  
8 mile away on company property. The landfill began operation in 1983.

9 II

10 The pulp and papermill use waste wood in its hog fuel boiler to  
11 recover heat. Both bottom and fly ash result. Before disposal the  
12 ash is washed to lower alkalinity and reduce dust. After washing the  
13 ash remains caustic (basic), with a pH of approximately 12. The  
14 company estimates that 7 1/2 to 15 dry tons of ash are produced daily  
15 (10 to 25 cubic yards).

16 III

17 In the mill's lime kiln, sodium hydroxide is used as a cooking  
18 liquor. Calcium carbonate "mud", with "contaminants" of sand, silica  
19 and pieces of brick, result. Some calcium adheres to these  
20 contaminants. This is what is known as "lime slacker grits". These  
21 grits are removed and washed to retrieve soluble calcium carbonate,  
22 and to lower the alkalinity. (Any calcium carbonate recovered is  
23 returned to the manufacturing process.) The grits are

1 washed until the pH is below 12.5. The washed grits, which are still  
2 alkaline, are transported to the landfill.

### 3 III

4 Yearly, 11,000 dry tons of the grits and ash are deposited in the  
5 landfill.

6 The landfill has an anticipated capacity of 20 years. No office  
7 garbage is dumped here. In the past, waste tires have been burned at  
8 the plant and the remnants dumped in the landfill. This may account  
9 for the zinc levels found in the groundwater.

### 10 IV

11 The landfill is divided into cells. Each cell has an estimated  
12 capacity of three to four years at current levels of waste  
13 production. A cell is excavated to a 30 to 40 foot depth. It takes  
14 weeks for an eight-foot layer of ash and grits to accumulate. During  
15 this time, the ash and grit are exposed to the elements. (The area  
16 has an average rainfall of at least 17 inches.) The layer is capped  
17 with a one-foot layer of other material and compacted with a  
18 bulldozer. Ultimately the cell is contoured to match the surrounding  
19 land.

### 20 V

21 Both the ash and the grits are fine grained materials. When  
22 water contacts the ash and the grits, either directly when the  
23 material is exposed to the elements, or after percolating through the  
24

1 soil, some of the materials dissolve. The calcium carbonate in the  
2 lime is not a highly soluble substance. However, both the grit and  
3 the ashes' fine grain enhances the dissolution rate by providing a  
4 large amount of surface area.

5 The above processes are physical, i.e. solids going into  
6 solution, and chemical when the grits and ash react with water. A  
7 leachate is formed.

8 The soils in the area are a product of glacial activity, composed  
9 primarily of sands and gravel. Leachate can pass through this  
10 relatively permeable soil.

#### 11 VI

12 The groundwater aquifer is 200 feet below the landfill,  
13 approximately at sea level. Existing water wells are several hundred  
14 feet away, to the west and south, likely upgradient from the  
15 landfill. Based on the evidence presented, the water that percolates  
16 through the landfill is likely to flow away from these particular  
17 wells.

18 The groundwater has been found to have an elevated level of  
19 barium, with one sample exceeding the drinking water standards.

20 Port Townsend obtains its drinking water from unrelated surface  
21 waters.

#### 22 VII

23 Installation of groundwater monitoring wells would likely cost  
24 \$50 to \$90 per foot per well for a depth of 200 feet. The cost for  
25

1 four wells, one upgradient of the landfill and three downgradient,  
2 would be \$40,000 to \$72,000.

3 VIII

4 On August 10, 1989, Jefferson County Health Department issued  
5 Landfill Permit No. 11 to PT Paper to operate an inert landfill at  
6 this site. The permit did not require groundwater monitoring.

7 On September 5, 1989 the State of Washington Department of  
8 Ecology filed an appeal with this Board. The appeal became our PCHB  
9 No. 89-113.

10 IX

11 Any Conclusion of Law deemed to be a Finding of Fact is hereby  
12 adopted as such.

13 From these Findings of Fact, the Board reaches the following:

14 CONCLUSIONS OF LAW

15 I

16 The Board has jurisdiction over the parties and the subject  
17 matter. Chapters 43.21B and 70.95 RCW.

18 II

19 The Solid Waste Management Act, Chapt. 70.95 RCW, creates a  
20 landfill permitting system. The owner or operator of a proposed  
21 facility applies for a permit from the county health department to  
22 dispose of solid waste. RCW 70.95.180(1)-(3). The permit when issued  
23 is for a one-year period.

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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER  
PCHB No. 89-113

The implementing regulations, at Chapt. 173-304 WAC, are designed to be prophylactic, to anticipate and prevent problems from occurring. This regulatory approach is particularly important when potential adverse affects might be difficult to remedy. This is particularly true for groundwater.

## III

Those landfills determined to be receiving inert material are not subject to many of the requirements of the Minimal Functional Standards of Chapt. 173-304 RCW. Groundwater monitoring, in particular, is not required. This is reasonable because inert materials retain their physical and chemical structure, and are unlikely to pose a measurable public health or environmental risk.

## IV

It is therefore necessary to determine when material is not "inert" as defined in the Solid Waste regulations at WAC 173-304-100(40):

"Inert wastes" means noncombustible, nondangerous solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack and chemical attack from acidic rainwater.

The key legal question is: did the County properly issue an inert permit for the PT Paper landfill? The Department of Ecology, as the appellant, has the burden to prove that either the hog fuel boiler ash or the lime slaker grits are not "inert".

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB No. 89-113

1 IV

2 DOE has proven that both physical and chemical reactions occur  
3 when water contacts the grit and ash. This occurs whether or not the  
4 water is acidic. Therefore, the grits and the ash are not inert. WAC  
5 173-304-100(40).

6 We conclude that an inert permit should not have been issued. A  
7 remand of this permit is required. The PT Paper landfill operation  
8 has to comply with the Minimal Functional Standards of Chapt.  
9 173-304-400 WAC for groundwater monitoring.

10 We observe that no environmental harm has to be demonstrated, to  
11 reach this conclusion. The goal of the regulations is to prevent  
12 problems. However, with the physical realities extant, the County  
13 should consider a relatively modest groundwater monitoring program.  
14 Given the limited resources of Jefferson County, DOE's active  
15 co-operation after remand is elicited.

16 V

17 We do not reach conclusions about any other requirements of the  
18 Minimum Functional Standards, because they were not placed at issue.

19 VI

20 Any Finding of Fact deemed to be a Conclusion of Law is hereby  
21 adopted as such.

22 From these Conclusions of Law, the Board enters the following:  
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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER  
PCHB No. 89-113

1 ORDER

2 Landfill Permit No. 11 is REVERSED and the matter REMANDED to the  
3 County for action consistent with this opinion.

4 DONE this 23<sup>rd</sup> day of August, 1990.

5 POLLUTION CONTROL HEARINGS BOARD

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7 Judith A. Bendor  
8 JUDITH A. BENDOR, Presiding

9 Harold S. Zimmerman  
10 HAROLD S. ZIMMERMAN, Member

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26 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB No. 89-113

(8)



BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

State of Washington DEPARTMENT  
OF ECOLOGY,

Appellant,

v.

JEFFERSON COUNTY HEALTH DEPARTMENT  
and PORT TOWNSEND PAPER COMPANY,

Respondent.

PCHB No. 89-113

ORDER GRANTING AMENDMENT

On August 23, 1990 the Pollution Control Hearings Board issued Final Findings of Fact, Conclusions of Law and Order ("decision") in this case. On September 10, 1990 Port Townsend Paper Company ("PTP") filed a Motion, Memorandum and Declaration supporting amendment of the Board's decision. On September 14, 1990 the Department of Ecology ("DOE") filed its memorandum in opposition. Jefferson County did not make filings.

Having considered the foregoing and the record, the Board issues the following:

I

PTP contends that the Board decision in the introductory section should be amended to show that the hearing was held in Seattle, and that it was an informal hearing pursuant to Chapt. 43.21B RCW and Chapt. 371-08 WAC. The decision will be changed to show the Seattle location.

ORDER GRANTING AMENDMENT  
PCHB No. 89-113

(1)

1 On the issue of formal versus informal hearing, the distinction  
2 is not a minor one. An appeal to Superior Court after a formal Board  
3 hearing is on the record developed before the Board, with a stringent  
4 review standard. In contrast, an appeal to Superior Court after an  
5 informal hearing is de novo.

## 6 II

7 The first issue for the Board to decide is: does the Board have  
8 jurisdiction to consider this motion? It can be contended that the  
9 motion was not timely filed. In Superior Court, Civil Rule 59  
10 explicitly requires motions to amend to be filed within 10 days of the  
11 final judgment. Here, the filing was made 18 days after the decision  
12 was issued. However, the Board's procedural rules at Chapt. 371-08  
13 WAC do not explicitly incorporate Superior Court rules for  
14 post-judgment proceedings.

15 The Board's procedural rules are silent about motions to amend.

16 The motion might be analogized to a motion to reconsider. Such a  
17 motion has to be filed within 10 days. Administrative Procedure Act,  
18 Chapt 34.05 RCW. In this instance, we decline to so analogize. The  
19 motion does not attempt to change any findings of fact or conclusions  
20 of law. Rather it seeks to amend an error in the introductory section  
21 section of the decision. As such, it truly is a motion to amend and  
22 is not a disguised motion to reconsider.

1 In sum, we conclude that it is not clear that the Board does not  
2 have jurisdiction to entertain this motion, and therefore the motion's  
3 merits will be considered.

### 4 III

5 Before doing so, however, it can be observed that the hearing was  
6 conducted in a formal manner. The parties had full opportunity to  
7 examine witnesses, to engage in direct, cross, re-direct and re-cross  
8 examination, to introduce exhibits, and to make argument. The rules  
9 of evidence as practiced in Superior Court were followed.

### 10 IV

11 As a factual matter, appellant DOE did not elect to have a formal  
12 hearing. Neither did the respondent parties so elect. Moreover, the  
13 parties have not referenced any place in the record where the Board  
14 explicitly designated the hearing as formal.

### 15 V

16 RCW 43.21B.140 states, in part, that a party taking an appeal may  
17 elect a formal or informal hearing, and that such election is to be in  
18 accordance with Board rules. Board rules at WAC 371-08-155 state that  
19 if no party makes an election, the hearing is informal.

20 The hearing was conducted with all the procedural protections of  
21 a formal hearing. But the Board's rules state that the procedures for  
22 conducting those hearings, whether formal or informal, "shall  
23 generally be the same". WAC 371-08-150. Therefore, under the rules,  
24

1 the formal manner in which the hearing was held did not somehow  
2 convert the proceeding into a "formal hearing" as that term is used in  
3 the rules and statute.

4 We therefore conclude that PTP's motion should be granted. We do  
5 so with some reluctance, because the parties' had the full range of  
6 procedural protections required by a de novo hearing.

7 We take this opportunity to correct the caption, to include all  
8 respondents.

9 ORDER

10 The Motion to Amend is GRANTED.

11 DONE this 21<sup>st</sup> day of September 1990.

12 POLLUTION CONTROL HEARINGS BOARD

13  
14   
15 JUDITH A. BENDOR, Presiding

16   
17 HAROLD S. ZIMMERMAN, Member